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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/675,654
Filing Date: September 30, 2003
Appellant(s): KARAOGUZ ET AL.

Ognyan I. Beremski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/1/2010 appealing from the Office action mailed 7/16/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

"The Gnutella Protocol Specification v0.4," June 3, 2001

"How to Download" downloaded from http://hartnett-services.com/index_files/page0003.htm.

Microsoft Support Document 320926, downloaded from <http://support.microsoft.com/kb/320926>.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-14, 17-24, and 27-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over "The Gnutella Protocol Specification v0.4", on June 3, 2001, hereafter referred to as "Gnutella" in view of Gregerson et al. in US 5,526,358, hereafter referred to as "Gregerson."

With regard to claim 1, Gnutella discloses a method for communicating information in a distributed media network, the method comprising:

automatically detecting initiating detecting and detecting whether one or more of new media, data and/or service within the distributed network is available (Gnutella: Page 1, "Query". The "Query" descriptor is used for finding media that is available on the network. Further, the actual act of detecting is performed automatically. Even if the

user initiates the act of detecting with a query, the act itself is performed automatically and without user intervention.);

migrating said newly available one or more of new media, data and/or service to at least a first media processing system with the distributed media network (Gnutella: Page 1, "Push". "migrating" is interpreted as being equivalent to transfer (See specification paragraph [0011], where transfer and migrate seem to be interchangeable).); and

storing said migrated newly available one or more of new media, data and/or service at said least a first media processing system (Gnutella: Page 7. The file is downloaded, which means that the file is stored at the destination.).

Gnutella does not disclose expressly initiating detecting without user intervention whether the one or more of new media, data, and/or service becomes newly available.

However, persistent query's, such as that disclosed in Gregerson, are very well known in the art. In Gregerson, a "Persistent Find Query" is utilized to detect the availability of a resource as soon as it is available in the network (Gregerson: Column 12, lines 29-41). For a persistent query, a user initiates the initial query. If the item being searched for is not found, the system automatically, and without user intervention, searches for the item again after some interval or in a continuous fashion. Thus, any new items would be discovered when the search executes after the new item appears in the system.

Thus, it would have been obvious to modify the teachings of Gnutella with persistent queries, such as that in Gregerson.

The suggestion/motivation for doing so would have been that a user that wishes to find a file, and is willing to wait for the file, would be able to enter a single query, and allow the system to search for the item in some persistent manner (whether the search never stops executing, or the search is performed at regular intervals) in order to discover the file as soon as the file is available in the network. This reduces the burden on the user in attempting to discover a file, and makes it more likely that a file that is hard to find may be found, as the system would continue to search even if the user is not initiating each search. Further, as detailed before, as recognized by a person of ordinary skill in the art, in a file sharing network, not all files are available at all times. As users are downloading files, logging on, and logging off, when the first query was made, no one currently on the network may have had the file, but at a later time, the file may become newly available, as a user on the network just obtained and shared the file, or a user with the file just logged onto the network. Thus, allowing persistent queries would allow a user to overcome this limitation of the Gnutella network with as little inconvenience to the user as possible..

With regard to claim 2, Gnutella as modified by Gregerson teaches the invention as substantially claimed except determining whether said stored migrated newly available one or more of new media, data and/or service should be processed.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

The Applicant is entitled to traverse any/all Official Notice taken in this action according to MPEP §2144.03. However, MPEP §2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Alhert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of this assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed." Further note that 37 CFR §1.67(c)(3) states "Judicial notice means official notice." Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

It would have been obvious to determine whether said stored migrated newly available one or more of new media, data and/or service should be processed.

The suggestion/motivation for doing so would have been that when a file is downloaded, the user should be able to decide whether the file will be processed or not. For example, if a user downloads a song, the user should be able to then determine if the song will actually be played (which would be processing the song's file) or just stored. This allows a user who is downloading many files or downloading larger files to determine when the file will actually be processed, and further allows security software operations (i.e. virus scan) to be performed on the file prior to processing the file.

With regard to claim 3, Gnutella as modified by Gregerson teaches the invention as substantially claimed except if said stored migrated newly available one or more of new media, data and/or service is to be processed, migrating said stored migrated newly available one or more of new media, data and/or service into one or more of a media view and channel view.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to migrate said stored migrated newly available one or more of new media, data and/or service into one or more of a media view and channel view if said stored migrated newly available one or more of new media, data and/or service is to be processed.

The suggestion/motivation for doing so is that the media view and channel view are both interpreted as being user interfaces for controlling output of the media file. For example, if a song file is downloaded, the user interface that would be displayed to the user for play, pause, fast forward, etc. operations would be the media view. There exist many programs for doing this (e.g. Windows Media Player, Quicktime Player, Real Player, Winamp), and these programs allow a user to control the media presentation, and for many systems, these programs are required to access the media files (for example, to play an mp3 file, the system requires an mp3 decoder, which is not necessarily integrated into the system, meaning a user must use a program that constitutes a media view to access these files).

With regard to claim 4, Gnutella as modified by Gregerson teaches that one or more of a media view and a channel view is associated with said first media processing system (As the media view is a program on the first system (as per the rejection of claim 3), the media view is associated with the first media processing system.).

With regard to claim 7, Gnutella as modified by Gregerson teaches automatically migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network (Gnutella: Pages 8-9. When a specific file is requested, it is automatically downloaded (migrated) to the requesting node).

With regard to claim 8, Gnutella as modified by Gregerson teaches the invention as substantially claimed except scheduling said migration of said newly available one or more of new media, data and/or service to one or more of said first media processing system and a second media processing system within the distributed media network.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to schedule migration of said newly available one or more of new media, data and/or service to one or more of said first media processing system and a second media processing system within the distributed media network.

The suggestion/motivation for doing so would have been that the claim, as currently presented, does not require any specific requirements with how the scheduling

is performed or that the scheduling is for a future date and time. A file is scheduled to be downloaded in an instance where the download is requested. Further, queues are very well known in the art, and allow a user to select more files for downloading than can concurrently be downloaded, where the queue starts downloading as many files at the same time as the system is capable of, and automatically downloads subsequent files as previous downloads stop (e.g. download is complete or interrupted). The queue itself is a kind of schedule.

With regard to claim 9, Gnutella as modified by Gregerson teaches indicating said migration of said newly available one or more of new media, data and/or service to one or more of said first media processing system and a second media processing system within the distributed media network (Gnutella: Page 8, Paragraphs 4-5. The file is indicated as being downloaded when the system determines that the number of bytes that the file is has been downloaded. Further, the system recognizes if a download was interrupted, meaning the system has a knowledge of when downloads are completed, the knowledge constituting an indication.).

With regard to claim 10, Gnutella as modified by Gregerson teaches the invention as substantially claimed except archiving said stored newly available one or more of new media, data and/or service.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to archive the stored newly available one or more of new media, data and/or service.

The suggestion/motivation for doing so would have been that archiving is interpreted as being storing the media in a non-temporary fashion. For example, storing the media on a system's hard disk after downloading the media constitutes archiving. Therefore, if a user wishes to have the file after the turning off the system, the user must store the file on some sort of non-volatile memory (e.g. the hard disk), the storing of which on a non-volatile memory being equivalent to archiving. It is further noted that other forms of archival (i.e. backing up) are well known in the art, where all of the data from a user's system would be archived to another system for storage and/or recovery reasons.

With regard to claims 11-14 and 16-20, the instant claims are substantially similar to claims 1-4 and 6-10, and are rejected for substantially similar reasons.

With regard to claims 21-24 and 26-30, the instant claims are substantially similar to claims 1-4 and 6-10, and are rejected for substantially similar reasons.

With regard to claim 31, Gnutella as modified by Gregerson teaches that said one or more processor is one or more of a computer processor, media peripheral processor, media exchange system processor, media processing system processor and

a storage processor (The processor must be one of these, as the system of Gnutella is implemented by a computer.).

With regard to claims 32-35 and 38-42, the instant claims appear to be substantially similar to claims 1-4 and 7-14, and are rejected for substantially similar reasons.

Claim Rejections - 35 USC § 103

Claims 5-6, 15-16, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gnutella in view of Gregerson, and further in view of US Patent Application Publication US 2002/0194309 to Carter et al., hereafter referred to as "Carter."

With regard to claim 5, Gnutella as modified by Gregerson teaches the invention as substantially claimed except determining whether to push said migrated newly available one or more of new media, data and/or service to at least one of a second media processing system and a personal computer coupled to the media exchange network.

However, Carter discloses a system for synchronizing media presentations from a first system to a second system (Carter: Paragraph [0043]). The system determines whether to copy files from the first system to the second system (Carter: Figure 4, 404).

It would have been obvious to combine the synchronization of media systems, as in Carter, with the method of Gnutella as modified by Gregerson.

The suggestion/motivation for doing so would have been that the system of Carter allows a user to synchronize a second media system with the media presentations on a first media system (e.g. the user's home computer). Thus, the files downloaded using Gnutella can be transferred to the second device so that the user may enjoy the media presentations in other environments besides the home computer (for example, the user's car).

With regard to claim 6, Gnutella as modified by Gregerson and Carter if said migrated newly available one or more new media, data and/or service is to be pushed, migrating said one or more of newly available media, data and/or service to said one or more of said second media processing system and a personal computer coupled to the media exchange network (Carter: Figure 4, 430. When the system of Carter is utilized with that of Gnutella, media files would be transferred (migrated) from the first location to the second location. The mobile media server can be considered to be a media processing system.).

With regard to claims 15-16, the instant claims are substantially similar to claims 5-6, and are rejected for substantially similar reasons.

With regard to claims 25-26, the instant claims are substantially similar to claims 5-6, and are rejected for substantially similar reasons.

With regard to claims 36-37, the instant claims are substantially similar to claims 5-6, and are rejected for substantially similar reasons.

(10) Response to Argument

Issue 1: On pages 7-11 of the Appeal Brief, Appellant argues that Gnutella as modified by Gregerson does not teach “automatically and without user intervention, initiating detection and detecting whether one or more of new media, data, and/or service becomes newly available within the distributed network.”

The claim language in question is presented in claims 1, 11, 21, and 32. In the case of claim 1, the cited step is the first step that appears in the method claim, and the only portion of the step that is related to the other steps is the “newly available one or more of new media, data and/or service,” which is migrated and stored in the subsequent steps.

Before directly addressing Appellant’s arguments, the scope of the claim should be determined. There are two parts of the step, first “initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network.” The second portion is that this functionality is performed “automatically and without user intervention.”

The first portion is interpreted to be any process by which newly available media, data and/or service is detected. For instance, in Gnutella, a query is utilized to detect files that are available in a peer-to-peer network. As for detecting a “newly available” media file, as contended in the Final Rejection presented on 8/19/2008, this may be

performed by a user manually performing repeated searches. Thus, if an initial search does not yield the desired result, the user may, at a later time, attempt the same search again, and find if the media has become available since the last search, and is thus "newly available."

However, since the Final Rejection mailed on 8/19/2008, Applicant has amended the instant claim to include language similar to the second part, "automatically and without user intervention." This portion is interpreted as being that the individual detection step, which is only performed once according to claim 1, is initiated automatically and without a user intervening in the initiating the individual detection step. Thus, the instant claim only requires one step of detection, and does not disclose details of how the detection is initiated, but rather how the detection is not initiated.

Thus, as the claim must be given the broadest reasonable interpretation from the perspective of a person of ordinary skill in the art, it is clear that the step, as a whole, must be interpreted as only the single detection step, and not cover each and every detection that may be performed before the detection. Thus, the concept of a "persistent query" is within the scope of the claim, as a persistent query, at least for one detection, initiates the detection automatically and without user intervention. A persistent query is a technique where after the query is initially created, it repeats a search a number of times at certain intervals.

How a persistent query is within the scope of this limitation is more easily explained with an example. For the example, it is assumed that a persistent query is to be performed five times with an interval of five seconds.

The persistent query is initially created with terms to find a file. In the case of Gregerson, and as indicated by Appellant, this initial creation may be by a user. The search is performed for a first time when the persistent query is created. This would be similar to the initial detection that was performed according to the Final Rejection of 8/19/2008, where the query did not find the media file.

Then, after five seconds, the query is performed a second time. If the file is not found, the query would be performed a third time after another five seconds, for a total of ten seconds after creation. This process continues for a fourth and fifth query, with a five second delay in between each query. These subsequent queries are performed by the system without any user input into each of the subsequent queries.

For each of the second, third, fourth, and fifth searches, any files that were found during the search are detected. Thus, it is apparent that a "persistent query" is an automated version of the process detailed in the rejection mailed 8/19/2008, where the queries after the initial query are initiated automatically. Further, it is clear that each of the second, third, fourth, and fifth queries are actually initiated "automatically and without user intervention," as required by the instant claim.

Thus, in the currently applied rejection, the step of "automatically and without user intervention, initiating detection and detecting whether one or more of new media, data, and/or service becomes newly available within the distributed network" is not being rejected over the creation of the persistent query, by the persistent query as a whole, or by the initial query. Rather, the step is being rejected by one of the

subsequent queries, such as one of the second, third, fourth, or fifth queries, as in the example provided above.

Meanwhile, on pages 7-101, Appellant argues that as the user must create the persistent query, including the search criteria (e.g. search string), the combination of Gnutella and Gregerson cannot teach “automatically and without user intervention, initiating detection.” However, as detailed above, the claimed step is not rejected over the persistent query as a whole. Rather, the claimed step is rejected over one of the individual, subsequent searches performed by the persistent query, as these individual, subsequent searches are each initiated “automatically and without user intervention.” The only user involvement with the subsequent searches is that the query utilizes the parameters provided from the user prior to the initialization of the individual search. However, the user does not intervene in the initiation of any of the subsequent searches.

Further, on pages 10-11, Appellant specifically addresses the response presented in the Advisory Action mailed 10/5/2009.

First, Appellant argues that, contrary to Examiner’s assertion, “claim 1 indeed provides sufficient details on how the detection is initiated,” and argues that the detail is that the “detection is initiated automatically and without user intervention.”

However, the only real detail of how the detection is initiated is that it is initiated “automatically.” Meanwhile, the phrase “without user intervention” is not providing details of how the detection is initiated, but rather provides details of how the detection is not initiated. The statement that Appellant is arguing, where Examiner stated that the

claim provides no detail on how the detection is initiated was pointing out that Appellant does not state what entity is performing the detection, or specifics on how the detection is initiated. For instance, the instant claim provides no details on what entity initiates the detection. Further, the instant claim does not provide details to limit the initiating to a single detection, or to a series of detections. The distinction between initiating to a single detection or to a series of detections would mean, for instance, the difference between the initiating being for each subsequent query in a persistent query or to the persistent query as a whole. Thus, the statement that is being argued by Appellant was intended to point out that the most detail provided in the claim is a negative recitation, and thus is detailing how the initiation is not performed, and indicate to Appellant that the step should instead positively recite how the initiation is performed.

Second, Appellant argues that how each subsequent execution of the query is performed is irrelevant in these circumstances. However, as a reference or a combination of references only needs to disclose or teach the invention in as much detail as is claimed, how each subsequent execution of the query is performed is relevant, as the instant claim is only drawn towards the initiation of a detection, where a single initiation of a detection is interpreted as being equivalent to the initiation of a single search of a persistent query, as detailed above.

It is further noted that in most cases, a user action can be linked to the initiation of any functionality performed by a user's device. To find Appellant's arguments persuasive, the instant claim would have to be interpreted in a fashion where the user can not perform any action that results directly or indirectly in the performance of the

detection step. However, in the instant case, the disclosed invention involves a user device, such as the equipment shown in the user's home (Specification: Figure 3, 303) or the Parent's home (Specification: Figure 3, 310). If the overly broad interpretation of the instant claim language apparently asserted by Appellant were taken, it would be reasonable to interpret that the act of a user initiating the software or hardware that performs the detection would mean that the user intervened in the initiation of detection, as the user must have turned on the device (whether by activating the device through a switch or button, or connecting the device to a power supply) or started the program to initiate the detection. Accordingly, using Appellant's interpretation would not make sense, as a device that performs functionality is always initiated by a user at some point, where without the user intervening at some point, the detection of the instant claim could never be performed. Thus, lacking any disclosure as to how the detection can be initiated without the user ever intervening, it is clear that the apparently argued scope of the term "automatically and without user intervention" is not supported by the instant specification.

Thus, for the above reasons, it is clear that "automatically and without user intervention, initiating detection and detecting whether one or more of new media, data, and/or service becomes newly available within the distributed network" only requires that the individual detection, or search, is initiated "automatically and without user intervention."

Issue 2: On pages 12-16, Appellant argues the finding of Official Notice with respect to claims 2, 12, 22, and 33.

On page 13-14, Appellant argues that a hypothetical user device “may be set to record only a number of newly available downloads.” Thus, as one instance is present where the functionality is not performed, the noticed facts would not be considered to be well known in the art.

However, this argument would only be persuasive in a situation where the limitation were rejected as being inherent. However, this is a case where the limitation is rejected as being obvious as the limitation is very well known in the art. Accordingly, the arguments do not actually serve to show how the noticed fact is not well known.

Further, Microsoft Internet Explorer version 6, which was released August 27, 2001, performed this functionality. Evidence of this can be found in “How to Download,” downloaded from http://hartnett-services.com/index_files/page0003.htm. In the article, is pointed out that Internet Explorer 6 presented a dialog box to a user that included the options to “Run,” “Open Folder,” or “Close” after a file was downloaded. This allowed a user to decide whether to run a file, see where the file was downloaded, or simply close the dialog box. Thus, if “Run” was selected, the file is processed. If one of the other options was selected, the file is not processed.

Accordingly, it is clear that it was notoriously well known in the art to determine whether a newly stored file (at least data) should be processed, as this functionality was performed at least by Microsoft Internet Explorer 6.

Thus, as Appellant has failed to provide any specific argument as to how the functionality of claims 2, 12, 22, and 33 was not well known in the art, the rejection of claims 2, 12, 22, and 33 should be maintained. Further, as Microsoft Internet Explorer 6 performed the cited functionality, the rejection of claims 2, 12, 22, and 33 should be maintained.

Issue 3: On pages 14-16, Appellant broadly argues the findings of Official Notice with regard to claims 3, 8, and 10, but fails to provide any specific argument of how the noticed facts are not considered to have been well known.

Further, with regard to claim 3, it is noted that at least migrating a media file to a media view if the media is to be processed was well known. For instance, Microsoft Windows Media Player 7.1 was available May 16, 2001. When a file that is associated with Windows Media Player 7.1 was opened in Microsoft Windows, Windows Media Player 7.1 would automatically be opened, and the file played in the program, meaning that the file was migrated to the media view. Evidence of this can be found in Microsoft Support Document 320926, downloaded from <http://support.microsoft.com/kb/320926>, where a problem is described concerning wms files. However, the article does demonstrate that running a wms file opened the file in Windows Media Player. Further, through the file associations of versions of Microsoft Windows released prior to 2001 (such as Windows 98), any file that is run, such as through the download dialog box, would be open using the associated program, such as media files for Windows Media Player version 7.1 or earlier.

With respect to claim 8, as detailed in the rejection of claim 8, there is no requirement as to what constitutes scheduling. A download queue would constitute scheduling files. Further, simply downloading a file would be scheduling the file for download, as the file is scheduled to be immediately downloaded. Thus, the download dialog box, as provided with regard to Issue 2, shows that it was well known to select to download a file, and thus schedule a file to be immediately downloaded. Appellant has failed to provide details of how the file is scheduled to be migrated or when the file is to be migrated. Thus, as Internet Explorer allowed a file to be scheduled to be immediately downloaded, it is clear that the invention would have been well known in as much detail as required by claim 8.

With respect to claim 10, as provided in the rejection, there is no detail as to what constitutes "archiving." Simply storing a file in non-volatile memory is interpreted as being "archiving," as the file would be available for later use. As seen in the article provided for Issue 2, "How to Download," the download dialog box includes a save option, meaning that the file is to be saved, or archived, in the computer storage.

Accordingly, lacking any evidence or arguments demonstrating why the subject matter of claims 3, 8, and 10 were not well known in the art, and in light of the above, it is clear that the rejection of claims 3, 8, and 10 should be maintained.

Issue 4: On pages 17-21, Appellant broadly argues the rejection of the remaining claims. However, the arguments rely on the infallibility of the arguments presented on

pages 7-16. Thus, the rejection of the instant claims should be maintained for at least the above reasons.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/S. C./

Examiner, Art Unit 2444

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Conferees:

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

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Supervisory Patent Examiner, Art Unit 2451